

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO**

STATE OF OHIO, STATE OF :
ALABAMA, STATE OF ARIZONA, :
STATE OF ARKANSAS, STATE OF : Case No. 1:21-cv-675
FLORIDA, STATE OF KANSAS, :
COMMONWEALTH OF KENTUCKY, : Judge Timothy S. Black
STATE OF MISSOURI, STATE OF :
NEBRASKA, STATE OF OKLAHOMA, :
STATE OF SOUTH CAROLINA, :
STATE OF WEST VIRGINIA, :
Plaintiffs, :
v. :
XAVIER BECERRA, in his official :
capacity as Secretary of Health and :
Human Services; U.S. DEPARTMENT :
OF HEALTH AND HUMAN :
SERVICES; JESSICA S. MARCELLA, in :
her official capacity as Deputy Assistant :
Secretary for Population Affairs; and :
OFFICE OF POPULATION AFFAIRS, :
Defendants. :
:

**COMBINED OPPOSED MOTION FOR INJUNCTION PENDING APPEAL
AND MEMORANDUM IN SUPPORT**

Ohio and the other Plaintiff States respectfully move the Court, under Federal Rule of Civil Procedure 62(d), for an injunction pending the States' appeal to the U.S. Court of Appeals for the Sixth Circuit. That Rule, although more often invoked to *stay* an injunction that a district court has ordered, also authorizes a court to "grant an injunction" while "an appeal is pending from an interlocutory order ... that ... refuses ... an injunction." Fed. R. Civ. P. 62(d). Counsel for the defendants has authorized the States to say that this motion is opposed.

The Plaintiff States appreciate that this Court denied their motion for a preliminary injunction, and that requests for injunctions pending appeal are governed by a standard similar to the one governing requests for preliminary injunctions. *Compare Roberts v. Neace*, 958 F.3d 409, 413 (6th Cir. 2020) (*per curiam*) *with D.T. v. Sumner Cty. Sch.*, 942 F.3d 324, 326 (6th Cir. 2019). Nonetheless, just as courts sometimes stay their own injunctions pending appeal, they sometimes issue an injunction pending appeal after *declining* to issue a preliminary injunction. *See, e.g., Sovereign Inupiat for a Living Arctic v. Bureau of Land Mgmt.*, No. 3:20-CV-00290-SLG, 2021 WL 454280, at *4 (D. Alaska Feb. 6, 2021). Here, doing so will preserve the *status quo ante* long enough for the States and the defendants to obtain review in an orderly manner from the Sixth Circuit and (ultimately) the Supreme Court. For that reason, and for all the reasons laid out in the States' preliminary-injunction-stage filings, the States respectfully request an injunction pending appeal.

Dated: December 30, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system.

/s/ Benjamin Flowers

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